SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937.

No. 256

STATE OF INDIANA on the Relation of
DOROTHY ANDERSON,
Petitioner,
vs.
HARRY BRAND, Trustee of CHESTER SCHOOL
TOWNSHIP OF WABASH COUNTY, INDIANA

RESPONDENT'S BRIEF,
SUPPLEMENTARY TO ARGUMENT

SUPPLEMENTAL ARGUMENT

Without restating the case and the issues, I wish to present to the court a very short and concise brief of the questions raised on argument and to further clarify the position of the respondent in this case.

It is our contention that in effect the state of Indiana through its legislature said to the teachers, we think it wise in order to better the educational system of Indiana to encourage teachers to look more favorably on their profession and to encourage new teachers to enter such a profession by providing stability and security of employemnt of teachers. Therefore, in effect, said, after you have taught five years we will

without any further requirements on your part *give* to you the right to have your teachers employment contract renewed from year to year indefinitely, or until you fail to properly conduct yourself as a teacher and retain your efficiency. The words "until such permanent teacher shall have reached the age of sixty-six years", were added to the 1927 law by the 1933 act as indicated in erratum.

It is our contention that the giving or granting of the right to an annually renewable contract of employment is to be distinguished from the contract of employment itself and the right to the continuation of the employment contract is not absorbed by the employment contract and does not become a part thereof.

It is our contention that if the statute has been or had been so drawn as to create contractural rights to permanent tenure subject to cancellation for causes then it would be an unlawful delegation of authority authorizing the township trustee to bind the State so as to fix an unchangable policy of employment with respect to a certain class of teachers to whom such rights would accrue during the pendency of such legislation.

Then our last contention is that if in the interest of public welfare the legislature has the right to limit the right of the contracting trustee to terminate otherwise terminative contracts for the betterment of the educational system that the legislature for the same reason and in the exercise of the police power has the right to enact subsequent legislation effecting such contract if there be a contract.

There was a question about the opinion of the Indiana Supreme Court discussing the annually renewable feature of tenure rights and I point out to the court the opinion on the denial of petition for rehearing found on page 31, of the record, the court says "the original opinion was intended to be understood as ex-

pressing the view that no contractual right to be continued to be a teacher from year to year is involved. The teachers contracts are made for one year, and the terms may be changed annually." And again on page 32, the court said "but, if the relationship were considered as contractual by the rules of private contract, the provision for reemployment from year to year is not enforcable for want of mutuality."

The court said this because if tenure rights are contractual they must be treated as a new and separate contract, because such rights and regulation thereof, are in addition to the usual contract entered into each year, and therefore, the tenure contract, if such this court thinks there is, must stand or fall alone and not be dependent on the consideration expressed in the already existant employment contract.

I have carefully examined the briefs and record in the cases of Dodge vs School Board of City of Chicago, and Phelps vs the Board of Education of West New York cited in respondents brief and find that every question that is raised here was raised in those cases. In the Dodge case the petitioners argued as here that the teacher exchanged a choice of other employment for the security of a pension in her old age, and the Supreme Court of Illinois, answered that contention in the negative in that decision which was sustained by this court.

And we insist that the decision in the Phelps case is absolutely and fundamentally identical to this case, because the statute in New Jersey, provided that after three years employment, that, employment relationship should continue indefinitely, thus, continuing the employment relationship permanently subject to discharge for statutory causes. If the right to the continuation of employment in Indiana be absorbed into the employment contract it is then, likewise, that New Jersey tenure rights would be absorbed in the continuing employment contract, and as this court said, it was not bound by the decision of the state court as to the

existence of a contract, so the only controlling feature of the New Jersey Supreme Court decision was that it did not call tenure rights contractural prior to the Phelps decision.

However, as indicated, the answer to that might be that the Supreme Court of Indiana, determined that such tenure rights were contractual, prior to the present opinion and that we are thus bound by the courts previous decision. I submit that neither the Elwood case or the Kostanzer case will support that contention, in fact, they decide exactly the opposite. The only case which comes dangerously near deciding that tenure rights are contractual is the case Auburn vs Hunt, Vol. 207, Indiana Supreme Court, page 61, when it said "The entire statute, with all its provisions must be read into and considered a part of the contract." However, a further reading of the decision will indicate that the court meant that as long as said statute was in force that the rights granted thereby, would be considered a part of the annual employment contract as to method of discharge or cancellation of that annual employment contract. This was clarified and followed in the instant opinion found on page 32, of the record where the court says "The statutes, the constitution, and the law, must be deemed a part of every teachers contract."

I, further submit to the court as is shown in the petitioner's complaint on page 1, of the record, that her tenure rights accrued by her employment during the 1929-1930 school year, giving credit for services prior to act or 1933-34, when she had no contract because of the dispute about further employment, and that what ever rights accrued, accrued at that time, and that there was no holding by the Supreme Court of Indiana—at that time declaring whether such rights were contractual or otherwise. On this subject I wish to further call the courts attention to the facts as shown on page 3 and 4 of the record. The Elwood case and the Kostanzer cases were both decided after the dispute arose be-

tween the petitioners and respondent as to her tenure rights and that Auburn vs Hunt, supra, was decided after litigation had started.

In conclusion we wish to impress on the court that the Indiana Supreme Court specifically states in its opinion at page 34 of the record that the Phelps case was a case "involving a situation comparable in all substantial respects with the case at bar."

In conclusion we wish to impress on the court that this case is entitled the gravest consideration before the United States Supreme Court should decide that the Indiana Supreme Court was palpably erroneous in their decision.

Respectfully submitted

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Asa J. Smith of Counsel